U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 0 1 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner intends to serve as a domestic violence victim advocate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO, in dismissing the appeal, affirmed the second finding but withdrew the first, concluding that the petitioner had not shown eligibility as a member of the professions holding an advanced degree.

The AAO incorporates its August 30, 2012 dismissal notice by reference. That decision contains further information about the procedural history of the matter now under consideration. Briefly, the AAO's August 2012 decision covered the following key points:

- Section 203(b)(2)(A) of the Act makes immigrant visas available "to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . whose services in the . . . professions . . . are sought by an employer in the United States." Section 203(b)(2)(B) of the Act permits a waiver of the job offer requirement "in the national interest."
- *In re New York State Dept. of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), established a three-pronged test for the national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications. *See id.* at 217. To meet the third prong, the petitioner must show a past history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.
- The petitioner's initial filing on April 11, 2011 included counsel's statement that the petitioner seeks to "pursue work as a Domestic Violence Advocate." The record did not show that the petitioner had any employment experience in that occupation; her most recent employment had been as a market research analyst for Counsel contended that the petitioner had amassed "an extensive record of dedicated commitment and service to combatting domestic violence and violence against women" as a volunteer for organizations based in the San Francisco Bay Area.
- The initial submission included copies of witness letters describing the petitioner's volunteer work, copies of articles the petitioner wrote, and other evidence of her advocacy work.
- On June 29, 2011, the director requested further evidence to show that the benefit from the petitioner's proposed employment will be national in scope, and to

establish a past record of prior achievement that justified projections of future benefit to the national interest. In response, counsel stated that the petitioner's "employment as a domestic violence advocate will involve educating the public across the country about domestic violence and fighting for change on the national level." The petitioner submitted additional evidence of local-level work.

- The director denied the petition on November 1, 2011. The director acknowledged the intrinsic merit of advocacy for victims of abuse and trafficking, but found that the petitioner had not shown her influence on the field or demonstrated any prospects for employment as an advocate. The petitioner appealed the decision, submitting a brief from counsel.
- The AAO, in dismissing the appeal on August 30, 2012, stated: "The director, as counsel acknowledges, found that the petitioner had not shown how she will work as an advocate. Absent this crucial information, there can be no affirmative basis for a finding that the benefit from the petitioner's future work will be national in scope." The AAO agreed with the director's observation that the petitioner's only demonstrated employment experience has been in marketing. The AAO determined that the petitioner's "vague intention to continue to pursue [her] cause . . . cannot suffice to establish prospective national benefit." The AAO acknowledged the submitted witness letters, but found that the evidence of record had not "meaningfully distinguished [the petitioner] from qualified workers in the field."
- The AAO made a further finding that the petitioner had not established that her intended work as a domestic violence advocate constituted a profession, or that her advanced degree in marketing was relevant to advocacy work.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reopen and/or reconsider is not simply another opportunity for the petitioner to claim eligibility for the benefit she seeks. The above regulations indicate that, to qualify as a proper motion, the new filing must show error in the previous decision or establish new facts that warrant a reversal of the earlier finding.

On motion, the petitioner recounts her history of dealing with abuse, both as a victim (at home and in the workplace) and as an advocate. The petitioner states that this five-page narrative constitutes her "motion to reconsider." A motion to reconsider, however, is not simply an attempt to persuade the AAO to change its past decision. Under the regulation at 8 C.F.R. § 103.5(a)(3), a motion reconsider must establish that the decision was based on an incorrect application of law or USCIS policy, and that the decision was incorrect based on the evidence of record at the time of the initial decision. The petitioner's statement accomplishes neither of these requirements. Instead, she explains

at length why she is passionate about her cause, and states that, if necessary, she will write to the president and contact the media, stating: "Yes, I am that desperate. . . . I will not stop until the violence stops." The AAO does not dispute the claims the petitioner makes in her statement, does not doubt her commitment to her cause, and does not deny that violence against women is a serious issue that continues to demand action. The present proceeding, however, is not a debate over whether or not such violence ought to be opposed. Rather, the petitioner has sought an immigration benefit governed by laws, regulations and case law, and the AAO must base its decision within those parameters. The petitioner's statement on motion does not touch on the AAO's decision at all, much less demonstrate that it contained any errors of fact or law. The petitioner's statement does not meet the requirements of a motion to reconsider.

The petitioner submits a second first-person statement on motion, recounting her activities in late 2011 and early 2012. All of the activities described took place after the director denied the petition on November 1, 2011, and therefore they cannot establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The AAO, like the director previously, did not deny that the petitioner has been a committed activist against domestic violence and related forms of abuse. Therefore, the submission of still more information about her activism is not grounds for reconsideration. As required by the regulation at 8 C.F.R. § 103.5(a)(4), the AAO will dismiss the motion to reconsider because it does not meet the requirements of such a motion.

As noted above, the regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. Based on the plain meaning of "new," evidence that was previously available and which the petitioner could have been discovered or presented earlier in the proceeding does not establish "new facts."[1]

At the same time, new facts cannot cause a previously ineligible alien to become eligible for the benefit sought; they can only shed light on prior circumstances. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Thus, a motion to reopen is not an opportunity for the petitioner to amass new credentials, experience, or other qualifying factors, and then attach them to a previously denied petition.

USCIS disfavors motions for the reopening of immigration proceedings for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. The filing of a motion to

[1] The relevant definitions of the word "new" are "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." *Webster's II New College Dictionary* 736 (2001)(emphasis in original).

reopen is not merely an opportunity for the petitioner to submit evidence that either should have been submitted earlier, or else has no bearing on the petitioner's eligibility as of the filing date.

Copies of previously submitted letters are not new evidence. Similarly, the petitioner submits a letter from president of the along with background information about that organization. The letter is dated August 9, 2011, which is roughly contemporaneous with several previously submitted witness letters. The letter does not establish "new facts." The AAO notes that the letter discusses a 2011 production of which the AAO had already acknowledged in its dismissal notice. As such, the letter introduces adds no significant information to the record.

When she filed the petition, the petitioner worked for as a market research analyst. Newly submitted documentation shows that in May, 2012, the U.S. Department of Labor found to be in violation of "the H-1B provisions of the INA" because it "failed to pay wages as required." An updated copy of the petitioner's résumé indicated that the petitioner left in summer 2011 (no exact date specified). The petitioner stated that, since summer 2011, she has worked as an "Independent Social Worker/Certified Anti-Domestic Violence & Multi-Language Advocate." The record does not clarify the nature of this work. The AAO, in its dismissal decision, observed that all of the petitioner's past work as an advocate had been as a volunteer, and that the petitioner had not claimed any of the required qualifications for employment as a social worker. The new submission on motion does not change or directly challenge those findings.

Other materials, such as certificates and promotional fliers, concern the petitioner's most recent activities. As stated above, such materials show that the petitioner remains a committed activist, but do not address the stated grounds for the dismissal of the appeal. Furthermore, because they cover late 2011 and early 2012, they cannot show that the petitioner was eligible for the benefit sought as of the petition's April 2011 filing date. The AAO finds that the petitioner has not submitted evidence of "new" facts that would warrant reopening the proceeding. The AAO will, therefore, dismiss the motion to reopen.

The petitioner's motion consists, essentially, of the petitioner's declaration that she intends to continue her advocacy work. The AAO does not oppose such efforts or hold that they are against the national interest. Rather, the AAO will dismiss the motion because it fails to address fundamental aspects of the AAO's dismissal decision. Specifically, the petitioner has not shown that she had ever been employed in an occupation relevant to her waiver request, or that she had any evident prospects for such employment. The petitioner has also not demonstrated that, as a domestic violence advocate, she qualifies for classification as a member of the professions holding an advanced degree. The petitioner has submitted no new evidence showing that the AAO should have overturned the denial, and has not established any error of fact or law in the AAO's decision. The AAO will dismiss the motion.

ORDER: The motion is dismissed.